

MEMORANDUM FOR THE STAFF DIRECTOR

THROUGH: DAVID MUSSATT, RPCU CHIEF

FROM: ILLINOIS ADVISORY COMMITTEE

SUBJECT: ILLINOIS ADVISORY COMMITTEE PROJECT PROPOSAL

Attached for your review and approval is an Illinois Advisory Committee project proposal on *Voting Rights in Illinois*. The Illinois Advisory Committee approved this proposal at a meeting of the Committee on October 14, 2016 by a vote of [ 10 ] yes and [ 0 ] no, [ 0 ] abstentions.

Attachments: Project Proposal  
Project Proposal Checklist

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This project proposal is:

\_\_\_\_\_ Approved

\_\_\_\_\_ Disapproved

\_\_\_\_\_ Returned for revisions according to comments.

\_\_\_\_\_  
Staff Director

\_\_\_\_\_  
Date

# **A project proposal of the Illinois Advisory Committee to the United States Commission on Civil Rights**

## **Topic: Voting Rights in Illinois**

**October 2016**

### Jurisdiction

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

Among the responsibilities of each Advisory Committee is to inform the Commission “of any knowledge of information it has of any alleged deprivation of the right to vote and to have the vote counted by reason of color, race, religion, sex, age, disability, or national origin, or that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination.”<sup>1</sup> Through this study, the Illinois Advisory Committee proposes to examine voting rights and voter participation in Illinois. Specifically, the Committee will examine the extent to which voters in the state have free, equal access to exercise their right to vote without regard to race, color, disability status, national origin, age, religion, and/or sex.

### Background

The right to vote is one of the most fundamental components of democracy—so important, in fact, that the United States Constitution includes *four* amendments protecting it.<sup>2</sup>

- Amendment XV guarantees the right to vote “regardless of race, color, or previous condition of servitude”;
- Amendment XIX guarantees that the right to vote will not be denied “on account of sex”;
- Amendment XXIV guarantees that the right to vote will not be denied “by any reason of failure to pay poll tax or other tax”;
- Amendment XXVI guarantees the right to vote for all citizens aged 18 years or older.

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<sup>1</sup> 45 CFR 703.2

<sup>2</sup> More information available at Legal Information Institute, Cornell University School of Law: U.S. Constitution.  
<https://www.law.cornell.edu/constitution/overview>

Though it does not explicitly address voting rights, the 14<sup>th</sup> Amendment to the U.S. Constitution has also been used to protect voting rights, granting citizenship to “all persons born or naturalized in the United States” and guaranteeing “equal protection of the laws”<sup>3</sup> to all within its jurisdiction.

Throughout much of American history however, state and local jurisdictions resistant to extending voting rights to African American citizens utilized techniques such as gerrymandering; and instituted discretionary, often inconsistently applied requirements such as poll taxes, literacy tests, vouchers of "good character," and disqualification for "crimes of moral turpitude" in order to suppress the African American vote.<sup>4</sup> In addition, terrorist organizations such as the Ku Klux Klan, and the Knights of the White Camellia, used harassment and violence to keep African American voters away from the polls.

As a result, in 1965 the United States Congress passed the Voting Rights Act<sup>5</sup> (VRA). Among its key provisions, the VRA prohibits public officials from “drawing election districts in ways that improperly dilute minorities’ voting power.”<sup>6</sup> It also requires that states and counties with a “history of discriminatory voting practices or poor minority voting registration rates” secure “preclearance” – that is, the approval of the United States Attorney General, or a three-judge panel of the District Court of the District of Columbia – prior to implementing any changes in their current voting laws.<sup>7</sup> With the extension of the VRA in 1975, Congress included protections against voter discrimination toward “language minority citizens.”<sup>8</sup> In 1982, the Act was again extended, and amended to provide that a violation of the Act’s nondiscrimination section could be established “without having to prove discriminatory purpose.”<sup>9</sup> In other words, regardless of intent, if voting requirements of a particular jurisdiction are found to have a discriminatory impact, they may be found in violation of the VRA.

In 1993, Congress enacted the National Voter Registration Act (NVRA), which was designed to further protect voting rights by making it easier to for all Americans to register to vote and to

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<sup>3</sup> More information available at Legal Information Institute, Cornell University School of Law: U.S. Constitution. <https://www.law.cornell.edu/constitution/overview>

<sup>4</sup> The United States Department of Justice, Introduction to Federal Voting Rights Laws. *Before the Voting Rights Act*. Updated August 6, 2015. Available at: <https://www.justice.gov/crt/introduction-federal-voting-rights-laws> (Last accessed July 12, 2016). Hereafter cited as *DOJ: Before the Voting Rights Act*

<sup>5</sup> 42 U.S.C. §§ 1973 to 1973aa-6

<sup>6</sup> Cornell University School of Law: Legal Information Institute. *Voting Rights Act*. Wex. Available at [https://www.law.cornell.edu/wex/voting\\_rights\\_act](https://www.law.cornell.edu/wex/voting_rights_act) (last accessed July 12, 2016)

<sup>7</sup> Cornell University School of Law: Legal Information Institute. *Voting Rights Act*. Wex. Available at [https://www.law.cornell.edu/wex/voting\\_rights\\_act](https://www.law.cornell.edu/wex/voting_rights_act) (last accessed July 12, 2016)

<sup>8</sup> The United States Department of Justice, History of Federal Voting Rights Laws. *The Voting Rights Act of 1965*. Updated August 8, 2015. Available at: <https://www.justice.gov/crt/history-federal-voting-rights-laws> (Last accessed July 14, 2016). Hereafter cited as *DOJ: The Voting Rights Act of 1965*

<sup>9</sup> *DOJ: The Voting Rights Act of 1965*

maintain their registration.<sup>10</sup> The Act requires states to allow citizens to register to vote at the same time they apply for their driver's license, or seek to renew their license; it also requires the state to then forward the voter's completed registration application to the appropriate election official. In addition, the NVRA requires voter registration support for individuals with disabilities and those seeking public assistance; it requires the option for voters to register by mail; sets forth requirements for how states maintain their voter registration applications; and under certain circumstances, protects citizens' right to vote regardless of a change in address.<sup>11</sup>

Despite the numerous laws and constitutional amendments established to protect voting rights in the United States, many continue to raise concerns regarding disparities in access to and participation in the country's electoral system. On June 25, 2013, in a historic decision (*Shelby County v. Holder*), the U.S. Supreme Court ruled that the formula used to determine which states should be subjected to "preclearance" requirements under the VRA was outdated and thus unconstitutional.<sup>12</sup> This ruling effectively nullified the preclearance requirement—a core component of the VRA—until such time as Congress agrees upon a new formula. According to the Brennan Center for Justice at the New York University School of Law, as of March 25, 2016, at least 77 bills to restrict access to registration and voting have been introduced or carried over from the prior session in 28 states.<sup>13</sup> Though across the country state efforts to expand voter access have outpaced restrictive measures overall, in November of 2016, 17 states will have restrictive voting laws in effect for the first time in a presidential election, and the United States will hold its first presidential election in more than 50 years without the full protections of the Voting Rights Act.<sup>14</sup> In this context, the Illinois Advisory Committee proposes to study the voting climate in Illinois, and the extent to which all qualified voters in the state have equal access to vote and to have their votes counted.

### Voting in Illinois

Voter identification requirements are among the most common type of voting restriction employed by states today.<sup>15</sup> While Illinois does not require most voters to present identification at the polls, voters may be required to show identification if an election judge challenges their right to vote, or if the person registered to vote by mail and did not submit the required

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<sup>10</sup> U.S. Department of Justice, Civil Rights Division. *About the National Voter Registration Act*. Available at: <https://www.justice.gov/crt/about-national-voter-registration-act> (last accessed September 26, 2016) Hereafter cited as: *DOJ: About the National Voter Registration Act*.

<sup>11</sup> *DOJ: About the National Voter Registration Act*.

<sup>12</sup> Supreme Court of the United States: Syllabus. *Shelby County, Alabama v. Holder, Attorney General et al.* Available at: [https://www.supremecourt.gov/opinions/12pdf/12-96\\_6k47.pdf](https://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf) (last accessed July 21, 2016) See also: Schwartz, John. *Between the Lines of the Voting Rights Act Opinion*. The New York Times. June 25, 2013. Available at: [http://www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html?\\_r=2&](http://www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html?_r=2&) (last accessed July 21, 2016)

<sup>13</sup> Brennan Center for Justice at the New York University School of Law. *Voting Laws Roundup 2016*. April 18, 2016. Available at: <https://www.brennancenter.org/analysis/voting-laws-roundup-2016>. (Last accessed July 21, 2016) Hereafter cited as: *Voting Laws Roundup 2016*

<sup>14</sup> *Voting Laws Roundup 2016*

<sup>15</sup> *Voting Laws Roundup 2016*

identification at the time of registration.<sup>16</sup> Two forms of identification are required when a voter wishes to register, change their name, or change their address later than October 11<sup>th</sup> in a given election year.<sup>17</sup>

Other examples of voting restrictions imposed by states include cutting early voting; requiring documentary proof of citizenship for voting; prohibiting people with prior felony convictions from voting; crosschecking voter registration with other states, and purging the registration of those accused of being registered in more than one state; moving and consolidating polling places; and prohibiting third parties from collecting and turning in early ballots on behalf of voters.<sup>18</sup> States' adoptions of such measures vary widely across the country. For example, in Maine and Vermont, persons with felony convictions never lose the right to vote, even while they are incarcerated.<sup>19</sup> Illinois is one of 14 states in the country that automatically restores the rights of persons with felony convictions to vote after their release from incarceration.<sup>20</sup> 29 states automatically restore voting rights, but not until completion of an offender's entire sentence, including parole and probation. Still, 9 states never offer automatic restoration of voting rights at all, requiring the Governor's or a court's action to restore those rights.<sup>21</sup> According to the National Conference of State Legislatures, even in states where voting rights for people with felony convictions are automatically restored, such as Illinois, a lack of information and timely communication between courts, corrections officials, and elections officials can "result in uneven application of the law, even when the laws are clear."<sup>22</sup> For example, "Ex-offenders sometimes are not aware that they regain their voting rights automatically upon completion of their sentence. They go through life believing they cannot vote when, in fact, they can....As long as they remain ignorant of the necessary steps, ex-offenders cannot begin the process of regaining voting rights."<sup>23</sup>

One way some states have sought to ensure all qualified voters are properly informed and to maximize voter registration rates is through automatic voter registration. Under automatic voter registration, eligible citizens are automatically registered to vote when they interact with government agencies, such as when they apply for or renew their driver's license—unless they

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<sup>16</sup> Chicago Board of Election Commissioners: When You Need ID to Vote. Available at: <http://www.chicagoelections.com/en/when-you-need-id-to-vote.html> (last accessed September 22, 2016)

<sup>17</sup> Chicago Board of Election Commissioners: When You Need ID to Vote. Available at: <http://www.chicagoelections.com/en/when-you-need-id-to-vote.html> (last accessed September 22, 2016)

<sup>18</sup> The Advancement Project. Barriers to the Ballot: Restrictive Voting Procedures in 2016. Available at: [http://b3cdn.net/advancement/8579f669557471b98c\\_yfm6bxkd8.pdf](http://b3cdn.net/advancement/8579f669557471b98c_yfm6bxkd8.pdf) (last accessed September 22, 2016)

<sup>19</sup> National Conference of State Legislatures: Felon Voting Rights. Available at: <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> (last accessed September 22, 2016)

Hereafter cited as *NCSL: Felon Voting Rights*.

<sup>20</sup> *NCSL: Felon Voting Rights*

<sup>21</sup> *NCSL: Felon Voting Rights*

<sup>22</sup> *NCSL: Felon Voting Rights*

<sup>23</sup> *NCSL: Felon Voting Rights*

decline to do so.<sup>24</sup> Because voter information is then securely and electronically transferred to election officials, proponents argue that such automatic processes may both save money and reduce the potential for voter fraud.<sup>25</sup> In May of 2016 both chambers of the Illinois General Assembly overwhelmingly passed legislation that would have instituted automatic voter registration in the state, beginning in January of 2018. However, shortly after the bill's passage, Illinois Governor Bruce Rauner vetoed the bill, citing concerns regarding the potential for fraud and conflicts with federal law.<sup>26</sup> As of the time of this proposal, supporters of the measure are seeking an override to the Governor's veto.

Same day voter registration—allowing voters to both register to vote and to cast their ballots on Election Day—is another effort states employ in order to maximize voter access and participation. In 2014, the Illinois General Assembly instituted a pilot program to allow for same day voter registration in the general election.<sup>27</sup> After the election, the Illinois General Assembly passed additional legislation (SB 0172) making same day voter registration permanent throughout the state.<sup>28</sup> Under SB 0172, counties with a population of less than 100,000 that do not have electronic registration records are permitted to opt out of same day registration at some polling locations, provided that same day registration remains available at the election authority's main office and at “a polling place in each municipality where 20% or more of the county's residents reside.”<sup>29</sup> However, in August of 2016 Republican U.S. House candidate Patrick Harlan and the Crawford County Republican Central Committee filed a lawsuit in federal court alleging that such exemptions unfairly disenfranchise voters from rural counties.<sup>30</sup> In September of 2016, U.S. District Court Judge Samuel Der-Yeghiayan granted the plaintiff's motion for a preliminary injunction to block same day voter registration in the state prior to the 2016 presidential election.<sup>31</sup> In October of 2016, the 7<sup>th</sup> U.S. Circuit Court of Appeals stayed this injunction, re-opening same day voter registration for the November 8, 2016 presidential

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<sup>24</sup> Brennan Center for Justice: New York University School of Law. *Automatic Voter Registration*. September 2016. Available at: <https://www.brennancenter.org/analysis/automatic-voter-registration> (last accessed September 23, 2016). Hereafter cited as *Automatic Voter Registration*

<sup>25</sup> *Automatic Voter Registration*

<sup>26</sup> Pearson, Rick. *Rauner Vetoes Automatic Voter Registration Bill*. Chicago Tribune, August 12, 2016. Available at: <http://www.chicagotribune.com/news/local/politics/ct-bruce-rauner-veto-automatic-voter-registration-met-0813-20160812-story.html> (last accessed September 23, 2016)

<sup>27</sup> Tareen, Sophia. Same-day Voter Registration at Issue in Illinois Lawsuit. *Associated Press*. September 4, 2016. Available at: <http://bigstory.ap.org/article/55cf8dad5b944a06822b5214393d68ef/same-day-voter-registration-issue-illinois-lawsuit> (last accessed October 13, 2016)

<sup>28</sup> Illinois Public Act 098-1171; 10 ILCS 5/4-50, 5/5-50 and 5/6-100

<sup>29</sup> Illinois Public Act 097-766, eff. 7-6-12; 98-115, eff. 7-29-13; 98-691, eff. 7-1-14

<sup>30</sup> PATRICK HARLAN, et al., Plaintiff, v. CHARLES W. SCHOLZ, et al. Defendants. Case No. 1:16-cv-7832, Filed August 04, 2016 Available at: <https://d2dv7hze646xr.cloudfront.net/wp-content/uploads/2016/08/Harlan-v.-Scholz-complaint-with-expert-report.pdf> (last accessed October 13, 2016)

<sup>31</sup> PATRICK HARLAN, et al., Plaintiff, v. CHARLES W. SCHOLZ, et al. Defendants. No. 16 C 7832. Filed September 27, 2016. Available at: <http://www.jurist.org/paperchase/IL%20election.pdf> (last accessed October 13, 2016)

election.<sup>32</sup> The plaintiff's challenge to Illinois SB 0172 remains pending, though the case will not be decided until after the 2016 Election Day.<sup>33</sup>

The Illinois Advisory Committee seeks to study the extent to which these and other challenges may affect the right of all eligible citizens to vote and to have their votes counted in the state. Under the proposed inquiry, the Committee will study the impact of the following on voter access and participation in Illinois:

- Current voter registration requirements in Illinois;
- Automatic voter registration, particularly in the context of the intent of the NVRA and the Governor's recent veto;
- Adequate, consistent training of judges at polling centers;
- Voting rights for the incarcerated in Illinois, including the provision of absentee ballots to incarcerated individuals awaiting trial who have not yet been convicted;
- Voting rights restoration for the formerly incarcerated in Illinois, including public responsibility to inform individuals of their right to vote upon release;
- Barriers to voting for underrepresented individuals such as Limited English Proficient voters and voters with disabilities;
- The impact of same-day voter registration on voter access and participation;
- Other areas of concern regarding equal protection/disparate impact, including but not exclusive to access to polls, access to early and absentee voting, lines and wait times, and districting.

Specifically, the Committee seeks to study the extent to which such concerns may result in a disparate impact on voter registration or voter participation on the basis of any federally protected category, regardless of discriminatory intent.

### Scope

The scope of this project is limited to an examination of voter participation in Illinois, and any disparities on the basis of race, color, disability status, national origin, age, religion, and/or sex. The Committee will examine the extent to which specific state or local policies and practices may contribute to indicated disparities, as well as alternative practices or recommendations with the demonstrated potential to address such concerns.

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<sup>32</sup>Geiger, Kim. Same-day Voter Registration will be an Option November 8 in Illinois. *Chicago Tribune*. October 7, 2017. Available at: <http://www.chicagotribune.com/news/local/politics/ct-illinois-same-day-voter-registration-1009-20161007-story.html>. (last accessed October 13, 2016)

<sup>33</sup> *Id.*

## Methodology

This project will include a gathering of data, documents, and opinions to enable the Illinois Advisory Committee to reach factual determinations. In this project, the Committee will gather direct testimonial evidence from citizens and experts as well as documentary evidence from such individuals. The Committee proposes to hold one or more public meeting(s), during which the Committee will solicit testimony and comments from community members, voting rights advocates, academics, poll workers, and public officials regarding voter participation in the state, as well as any noted disparities on the basis of race, color, disability status, national origin, age, religion, and/or sex, and the civil rights implications thereof. This/these meeting(s) may take place in person or via web-conference. The purpose of the meeting(s) will be to hear information directly from Illinois residents—particularly those who may be/may have faced barriers to voting in the state—as well as public officials, advocates, scholars, and other experts. The public meeting(s) will be advertised and recorded by a court reporter. The meeting(s) will include time for public comment in which any Illinois resident who wishes to share may do so. The Committee will also accept written statements submitted by residents who are unable to attend the public meeting in person.

The Committee also proposes to gather factual information related to voter participation in the state. Specifically, the Committee will review state level voter participation data to better understand what data are currently available, and what data may be missing in order to adequately study this issue and make informed recommendations. To ensure a balance of perspectives, all members of the bipartisan Committee will be invited to participate in drafting the agenda for the public meeting(s) at which the Committee will hear testimony from residents, scholars, and other experts.

## Anticipated Outcomes

An anticipated outcome of the project is to ensure that the U.S. Commission on Civil Rights is advised of existing disparities in the state on the basis of race, color, disability status, national origin, age, religion, and/or sex. The Committee hopes that such information will lead to a better understanding of the status of voting rights in Illinois and any related civil rights concerns. The Committee proposes to advise the Commission by issuing a report with its findings and recommendations at the conclusion of this project.



Time Frames

Committee and OSD approval of proposal	November 2017
Public Meeting in Illinois	January/February 2017
Completion of research and closing of the official record	March 2017
Draft Report submitted by legal review and editing	June 2017
Approval of report by full committee and public release	July 2017

Anticipated Costs

Staff Travel	\$
Public hearing	
Meeting room	\$
Transcription services	\$
SAC travel to hearing	\$
 TOTAL	 \$

## SAC PROJECT PROPOSAL CHECKLIST

State: Illinois

Project Name: Voting Rights in Illinois

### Section I. Approval of Proposal by SAC

1. Was the report voted on by the SAC by mail, meeting, or a combination? \_\_\_\_\_
2. If the vote was taken by mail:  
What was the date the proposal was mailed:  
What was the response due date:  
Were follow-up calls made to the non-respondents?  
List those who failed to respond:  
List any special circumstances that apply to any of the non-respondents:
3. If the vote was taken during a meeting:  
Was the proposal mailed to members before the meeting: \_\_\_\_\_ Yes \_\_\_\_\_ No  
When was the proposal sent? \_What was the date of the meeting?  
Did the SAC review and approve the project proposal (not just the topic)? \_\_\_\_\_ Yes \_\_\_\_\_ No
4. What was the vote on the project proposal?

### Section II. Approval of Proposal by the Office of the Staff Director (to be completed by OSD)

1. Does the proposal identify actions (by staff and the SAC) that should result in balanced research and testimony? \_\_\_\_\_ Yes \_\_\_\_\_ No
2. Does the proposal identify sources to be used to research the topic and do they represent a variety of opinions on the issue? \_\_\_\_\_ Yes \_\_\_\_\_ No
3. Are milestones and estimated dates provided? \_\_\_\_\_ Yes \_\_\_\_\_ No
4. Is the schedule reasonable given other commitments to the scope of the project? \_\_\_\_\_ Yes \_\_\_\_\_ No
5. Is the project within the Commission's jurisdiction? \_\_\_\_\_ Yes \_\_\_\_\_ No
6. Is the project budget reasonable given its scope and the availability of funds? \_\_\_\_\_ Yes \_\_\_\_\_ No